CONFIDENTIAL INFORMATION REDACTED

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

ASSURED GUARANTY MUNICIPAL CORP., f/k/a FINANCIAL SECURITY ASSURANCE, INC.

Plaintiff,

vs.

Case No.: 11-CIV-2375 (JSR)

FLAGSTAR BANK, FSB; FLAGSTAR CAPITAL MARKETS CORPORATION; and FLAGSTAR ABS, LLC

Defendants.

DECLARATION OF SUSAN SHIN IN SUPPORT OF FLAGSTAR BANK, FSB, FLAGSTAR CAPITAL MARKETS CORPORATION, AND FLAGSTAR ABS, LLC's MOTION TO EXCLUDE THE TESTIMONY OF REBECCA WALZAK CONCERNING ALLEGED BREACHES OF REPRESENTATIONS AND WARRANTIES

SUSAN SHIN declares:

- 1. I am an attorney admitted to the Bar of the State of New York and the Bar of this Court, and I am a member of the law firm of Arnold & Porter LLP, attorneys for defendants Flagstar Bank, FSB, Flagstar Capital Markets Corporation, and Flagstar ABS (collectively, "Flagstar"). I submit this declaration in support of defendants' motion to exclude the testimony of Rebecca Walzak concerning alleged breaches of representations and warranties.
- 2. Attached hereto as Exhibit A is a true and correct copy of Rebecca Walzak, "A Fair Fight for Repurchases," MORTGAGE SERVICING NEWS, Feb. 15, 2012, available at http://www.nationalmortgagenews.com/blogs/risky/fair-fight-repurchases-1028904-1.html (last visited May 22, 2012).

- 3. Attached hereto as Exhibit B is a true and correct copy of the Corrected Expert Report of Rebecca Walzak, dated December 2, 2011. This exhibit is filed under seal pursuant to Protective Order.
- 4. Attached hereto as Exhibit C is a true and correct copy of excerpts from the deposition of Joseph Mason, taken January 4, 2012 and February 13, 2012.
- 5. Attached hereto as Exhibit D is a true and correct copy of excerpts from the deposition of Rebecca Walzak, taken December 19, 2011. This exhibit is filed under seal pursuant to Protective Order.
- 6. Attached hereto as Exhibit E is a true and correct copy of the Expert Report of Jeffrey Nielsen, dated December 22, 2011. This exhibit is filed under seal pursuant to Protective Order.
- 7. Attached hereto as Exhibit F is a true and correct copy of the Expert Report of John Griggs, dated January 1, 2012. This exhibit is filed under seal pursuant to Protective Order.
- 8. Attached hereto as Exhibit G is a true and correct copy of excerpts from the deposition of George Stiehl, taken November 17, 2011.
- 9. Attached hereto as Exhibit H is a true and correct copy of Exhibit 25 to the deposition of George Stiehl. This exhibit is filed under seal pursuant to Protective Order.
- 10. Attached hereto as Exhibit I is a true and correct copy of Exhibit 26 to the deposition of George Stiehl. This exhibit is filed under seal pursuant to Protective Order.
- 11. Attached hereto as Exhibit J is a true and correct copy of Exhibit 27 to the deposition of George Stiehl. This exhibit is filed under seal pursuant to Protective Order.
- 12. Attached hereto as Exhibit K is a true and correct copy of excerpts from the deposition of David Beard, taken November 1 and November 10, 2011.

- 13. Attached hereto as Exhibit L is a true and correct copy FSA's Executive Summary Flagstar Home Equity Loan Trust 2005-1. This exhibit is filed under seal pursuant to Protective Order.
- 14. Attached hereto as Exhibit M is a true and correct copy of FSA's Executive Summary Flagstar Home Equity Loan Trust 2006-2. This exhibit is filed under seal pursuant to Protective Order.
- 15. Attached hereto as Exhibit N is a true and correct copy of Exhibit 6 to the deposition of Rebecca Walzak taken December 19, 2011. This exhibit is filed under seal pursuant to Protective Order.
- 16. Attached hereto as Exhibit O is a true and correct copy of Exhibit 10 to the deposition of Rebecca Walzak taken December 19, 2011.
- 17. Attached hereto as Exhibit P is a true and correct copy of Exhibit 3 to the deposition of Rebecca Walzak taken December 19, 2011. This exhibit is filed under seal pursuant to Protective Order.
- 18. Attached hereto as Exhibit Q is a true and correct copy of Exhibit B (2005-1) to the Corrected Expert Report of Rebecca Walzak dated December 2, 2011. This exhibit is filed under seal pursuant to Protective Order. For the Court's convenience, this exhibit is also being provided in its original Excel format via disk.
- 19. Attached hereto as Exhibit R is a true and correct copy of Exhibit B (2006-2) to the Corrected Expert Report of Rebecca Walzak dated December 2, 2011. This exhibit is filed under seal pursuant to Protective Order. For the Court's convenience, this exhibit is also being provided in its original Excel format via disk.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 25, 2012

New York, New York

/s/ Susan Shin
Susan L. Shin
399 Park Avenue
New York, New York 10022
Tel: (212) 715-1000

Fax: (212) 715-1000 Susan.shin@aporter.com

Attorney for Defendants Flagstar Bank, FSB, Flagstar Capital Markets Corporation and Flagstar ABS, LLC

Exhibit A

National Mortgage News

(http://www.nationalmortgagenews.com



By Rebecca Walzak FEB 15, 2012

RISKY BUSINESS

A Fair Fight for Repurchases

Rebecca Walzak FEB 15, 2012 10:46am ET

Is there any enjoyment derived from two people punching each other until one drops to the ground? To me, there isn't, but I'm sure plenty of boxing fans would beg to differ.

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Boxing reminds me a lot of today's lenders. Most lenders get into the ring every day, fighting until someone drops. The reason however is not to win a match, but to prevent a repurchase.

Just ask the staff of any lender. They will tell you that the biggest risk they face is the risk of repurchase. In fact, many will say that quality loans are those that don't have to be repurchased. Is that how the industry should be defining quality loans? How did we get to the point that we are more worried about what will happen after we produce a loan, rather than making sure we produce it correctly in the first place?

There are two reasons for these boxing matches. The first is that the agencies seem to forget that we are in the business of risk. Trying to find just any problem to justify forcing a repurchase for a defaulted loan is counter to the purpose of a guaranty fee.

Secondly, we refuse to accept the fact that there is a clear relationship between processes and performance. Failing to manage process risk creates a high probability that many of the files will have errors that can lead to default. In my opinion, worrying about individual mistakes is like trying to prevent accidents. Preventing process risk is stopping a war.

In other words, I believe the agencies need to look at loans holistically, rather than focusing on individual issues or errors. They should also be able to justify that the issue they are citing as the reason for repurchase is actually a driver of the default.

For repurchases to be fair, there should be a cause and effect relationship. So rather than

looking for possible issues to throw back to the lender after a loan defaults, the agencies should be able to prove that the issue or issues cited caused the default. In too many cases, this cause and effect relationship is missing, and random and unforeseen risk is what triggered a default. Random risk is what the guarantee fee is supposed to cover, after all. Yet every day lenders continue to face a battle in fighting repurchase requests.

Which brings me back to boxing. As lenders go toe to toe with the agencies, let's make sure it's at least a fair fight. It's time for the industry to independently establish these relationships so that they can be addressed at the time the loans are purchased and not have to do battle years later.



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EXHIBIT B

Exhibit C

UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF NEW YORK

Case No. 11-CV-2375 (JSR)

ASSURED GUARANTY MUNICIPAL CORP., f/k/a FINANCIAL SECURITY ASSURANCE INC.,

Plaintiff,

-against-

FLAGSTAR BANK, FSB; FLAGSTAR CAPITAL MARKETS CORPORATION; and FLAGSTAR ABS, LLC,

Defendants.

560 Lexington Avenue New York, New York

January 4, 2012 9:30 a.m.

VIDEOTAPED DEPOSITION of JOSEPH R. MASON, taken by the Defendants, pursuant to Notice, held at the aforementioned time and place, before Sherri Flagg, a Registered Professional Reporter, Certified LiveNote Reporter, and Notary Public.

Page 22 1 - J. MASON, Ph.D -2 allegations were true. 3 MR. SWANSON: Would you mark, please, as Exhibit 5 the Corrected 5 Expert Report of Rebecca Walzak. 6 (Exhibit 5: Corrected Expert 7 Report of Rebecca Walzak 12/2/11, was marked for identification.) 9 BY MR. SWANSON (continuing): 10 Dr. Mason, did you ever review 11 Ms. Walzak's report that we've marked as 12 Exhibit 5? 13 Α. No, I did not. 14 Did anyone ever tell you about 15 Ms. Walzak's work? 16 I have some familiarity with 17 Ms. Walzak's work and I used her results in 18 my work. 19 How did you gain that familiarity? Q. 20 Α. Just a general familiarity. 21 Well, how did you gain that Q. 22 familiarity? By talking to counsel? By 23 talking to Ms. Walzak? By osmosis? 24 how. I'm familiar with re-underwriting 25 Α.

- 1 J. MASON, Ph.D -
- 2 exercises, I saw some of the background
- 3 spreadsheets that were used and, of course,
- 4 I implemented the results of this analysis
- 5 in my own analysis.
- 6 Q. Well, you say -- when you say you
- 7 "implemented the results of this analysis,"
- 8 tell me what you mean by that.
- 9 A. I relied upon Ms. Walzak's
- 10 assessment of underwriting breaches --
- 11 Q. You assumed --
- 12 A. -- in my own estimation of
- 13 damages.
- 14 Q. In other words, you assumed her
- 15 conclusions?
- MR. PORTERA: Object to form.
- 17 A. I was asked to implement her
- 18 conclusions in my analysis.
- 19 Q. Well, what does it mean to
- 20 implement a conclusion? That's not a phrase
- 21 that I would usually use in normal
- 22 conversation.
- 23 A. I was asked to utilize the
- 24 findings that she produced of defects on a
- 25 loan-by-loan basis --

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
Case No. 11-CV-2375 (JSR)

ASSURED GUARANTY MUNICIPAL CORP., f/k/a FINANCIAL SECURITY ASSURANCE INC.,

Plaintiff,

vs.

FLAGSTAR BANK, FSB; FLAGSTAR CAPITAL MARKETS CORPORATION; and FLAGSTAR ABS, LLC,

Defendants. -----x

> February 13, 2012 10:16 a.m.

Continued Videotaped Deposition of
JOSEPH R. MASON, Ph.D., held at the offices
of Arnold & Porter LLP, 399 Park Avenue,
New York, New York, pursuant to adjournment,
before Cary N. Bigelow, Court Reporter, a
Notary Public of the State of New York.

- J. Mason
- 2 documents that are listed on appendix B did you
- 3 rely upon, if any, in preparing your second
- 4 supplemental report.
- 5 A. The reason I offered the answer is
- 6 because I had assumed that we had cited the
- 7 prospectuses and supplements here in appendix B,
- 8 but I may have assumed incorrectly. If I did so,
- 9 I'm sorry.
- 10 Q. Did you rely upon the academic
- 11 literature listed at the top of the page on
- 12 appendix B in preparing your second supplemental
- 13 expert report?
- 14 A. No, I did not.
- 15 Q. Did you rely upon the expert report of
- 16 Rebecca Walzak in preparing your second
- 17 supplemental expert report?
- 18 A. I suppose so. I relied upon the
- 19 determinations of defective underwriting that she
- 20 made that I indicated in the first report and
- 21 followed up to utilize those in the same way in
- 22 the second report.
- Q. Are there any other documents listed on
- 24 page 22 that you relied upon in preparing your
- 25 second supplemental expert report?

EXHIBIT D

EXHIBIT E

EXHIBIT F

Exhibit G

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSURED GUARANTY MUNICIPAL)		
CORP., f/k/a FINANCIAL)		
SECURITY ASSURANCE INC.,	·)		
Plaintiff,)		
•)	Case No.	
vs.)	11-CV-2375	(JSR)
)		
)		
FLAGSTAR BANK, FSB;)		
FLAGSTAR CAPITAL MARKETS)		
CORPORATION; and FLAGSTAR)		
ABS, LLC,)		
Defendants.)		
)		

November 17, 2011 9:50 a.m.

Videopated deposition of GEORGE STIEHL, held at the offices of Arnold & Porter, 399 Park Avenue, New York, New York, pursuant to notice, before Barbara Driscoll, a Notary Public of the State of New York.

1 STIEHL access to all the underwriting guidelines. 2 Your original e-mail says, I am Q. reviewing your HELOC guidelines. So it appears from your original e-mail that you had access to Flagstar's HELOC underwriting guidelines? 7 Α. Yeah. You asked me if I was getting access to all their second liens and first liens. In the e-mail Brian provided to me, I don't know 10 if I am getting all access to the first and second 11 liens. 12 At a prior period of time, I might have 13 been handed the second lien underwriting 14 guidelines, but I am not sure if he was giving me 15 access in the directions of his e-mail. 16 So just to simplify even the question I 17 asked of you, your original e-mail indicates that you have access to the Flagstar's HELOC 18 19 underwriting quidelines, correct? 20 . It appears that is the case, although I 21 don't remember doing -- performing such a task, 22 but yes, it looks like I had them. 23 Ο. Then in the e-mail that Mr. Boike sent you on October 6 at 2005 at 5:50, he refers to 24 25 there being a product description for the agency

1 STIEHL 2 attachment. I can't pick out the 125 loans. 3 don't know what their loan ID's -- I didn't memorize them because you're saying they are 5 attachment to this, I would assume they are the 125 loans. 6 7 Q. Look at Stiehl 9. The top e-mail appears to be an e-mail from yourself to Paul H. 9 White at JP Morgan sending him the Flagstar 125 10 random selection from the 10/05 tape with 11 attachment to it. It says, here is our diligence 12 sample. What do you understand you're doing in 13 14 that e-mail? 15 Providing JP Morgan our 125 randomly selected loans. 16 What was the expectation that you had 17 18 in providing that to JP Morgan? 19 My expectation that was JP Morgan was Α. 20 going to forward this sample to a diligence firm. 21 I guess Clayton was the diligence firm that worked 22 on the first diligence. I can't say that we were 23 assuming that Clayton would do the second 24 diligence, but -- that is what I would assume was

25

the point of this.

Page 237 1 STIEHL Α. 2 Yes. 3 Would it be your expectation that this Q. would reflect what FSA's FICO loss model was reflecting for the 2005-1 securitization as of 5 December 5, 2005? 6 7 Α. It appears to be the same analysis that we discussed earlier, just on the 2005 tape -- I 9 mean, the December 5 tape. 10 THE VIDEOGRAPHER: This is the end of 11 tape number 5 in the videotape deposition of 12 George Stiehl. We are going off the record at 5:25. 13 14 (Recess taken.) 15 MS. RENDON: We are marking Exhibit 25 16 which is Bates AGM 04329220 through 9272. 17 (Stiehl Exhibit 25, Bates AGM 04329220 18 through 9272, marked for identification, as of this date.) 19 20 THE VIDEOGRAPHER: This marks the 21 beginning of tape number 6 in the videotape 22 deposition of George Stiehl. We are going on 23 the record. Time is it 5:42. 24 While we were off the record, we marked Q. 25 Exhibit 25. This is from Mr. Hachikian to a

Page 238 STIEHL 1 2 number of people, including yourself, related to Flagstar 2006-2. On 8720 it says, 250 dil sample. 3 What do you understand Mr. Hachikian is 5 sending to you and others on December 15, 2006? Α. It appears to be a diligence sample for 7 the Flagstar 2006-2 transaction. This appears to be the attachments to this or at least the attachment beginning at AGM 4329248 to 22972. Does this appear to be a 10 11 listing of randomly selected loans for the file 12 diligence on the 2006-2 transaction? 13 I am quessing that is what this appears 14 to be. 15 MR. BUCHDAHL: You said 249 --16 THE WITNESS: 9248 --17 I said 9248 through the end of the Q. document. Does that appear to be a listing of the 18 19 250 randomly selected loans? 20 It looks to be more than 250 loans Α. 21 starting on 9428. 22 The list of loans that appears starting 23 on 9249 to the end of the document, does that

I have no idea if these are the loans.

24

25

appear to be --

Page 239 1 STIEHL 2 I will ask you to look at AGM 43229267. Q. 3 Α. Sorry. I know you're getting tired. I need to 5 authenticate this stuff so we can understand what 6 these are. 7 On the pages appearing on AGM 4329249 to the end of the document, does this appear to be 9 a list of the 250 randomly selected loans? I don't know if -- you asked me -- your 10 11 first question is the information on 248 was the 12 250 loans and it is showing 3,675 loans --Which I understand to be the amount of 13 14 loans proposed for the transaction. 15 Α. So I don't know if the next pages 16 represent the loans that are the 3,000 or the 250. 17 Understanding that this starting at AGM 18 4329249 to the end of the document is, in its native form, an Excel spreadsheet, do you see on 19 20 the first page beginning at 249, it says match and 21 there is a number 1 through 69 on the first page? 22 Α. Yes. 23 Then if I ask you to turn to Bates Q. stamp 267, that match column goes down to 250? 24 25 Α. Okay.

Page 240 STIEHL 1 2 Does that cause you to believe that Q. 3 this is a list -- if we had printed it in Excel, that would show a list of 250 randomly selected 5 loans? Α. It is a reason to believe that, yeah, 7 sure. I will ask you to turn to Stiehl 8 0. Exhibit 26, please. 9 10 (Stiehl Exhibit 26, AGM 04140675 11 through 676, marked for identification, as of 12 this date.) 13 MS. RENDON: Exhibit 26 is an e-mail 14 stream bearing AGM 04140675 through 676. 15 The bottom is from Ryan Ashley to Brian Q. 16 Boike at Flagstar copying yourself and Mr. Beard 17 on September 15, 2006 and says, please find attached FSA's 250 loan random due diligence pool 18 19 list for the Flagstar 2006-2 transaction. Then at 20 the top it says, sorry this was returned the first 21 time. 22 Is it your belief that by this e-mail 23 Mr. Ashley was transmitting to Mr. Boike at 24 Flagstar the list of the 250 randomly selected 25 loans for the 06-2 transaction.

```
Page 241
                              STIEHL
 1
 2
            Α.
                  Appears to be the case.
 3
                   (Stiehl Exhibit 27, Bates number
            04140402 through 0405, marked for
 5
            identification, as of this date.)
 6
                  I will ask you to turn to Stiehl
            Q.
 7
       Exhibit 27, Bates number 04140402 through 0405.
 8
       It contains an e-mail string on -- all of which
 9
       occur on September 21, 2006. The original e-mail
10
       is from Joel C. Readance at JPM to folks at the
11
       Bohan group, Mr. Boike at Flagstar and Paul White
12
       at JP Morgan Chase.
13
                  Does it appear to be that Mr. Readance
1.4
       in his e-mail is explaining to folks at the Bohan
15
       group what the expectation is for their diligence
       of the 250 loan files?
16
17
                  MR. BUCHDAHL: Objection to the form.
                  It appears it is directions to Bohan
18
            Α.
       from Mr. Readance.
19
20
                  I will ask you to look at what is being
            Q.
21
       marked as Stiehl Exhibit 28.
22
                   (Stiehl Exhibit 28, Bates AGM 04621901
23
            through 910, marked for identification, as of
24
            this date.)
25
            Q.
                  Look at Exhibit Stiehl 28.
                                               I will read
```

EXHIBIT H

<u>EXHIBIT I</u>

EXHIBIT J

Exhibit K

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

ASSURED GUARANTY MUNICIPAL)		
CORP., f/k/a FINANCIAL) .		
SECURITY ASSURANCE INC.,)		
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vs.	•)	11-CV-2375	(JSR)
)		
)		
FLAGSTAR BANK, FSB;)		
FLAGSTAR CAPITAL MARKETS)		
CORPORATION; and FLAGSTAR)		
ABS, LLC,)		
Defendants.)		
)		

CONTINUED DEPOSITION OF DAVID BEARD

New York, New York
November 10, 2011

Reported By:

CATHI IRISH, RPR, CLVS, CCR

1 BEARD

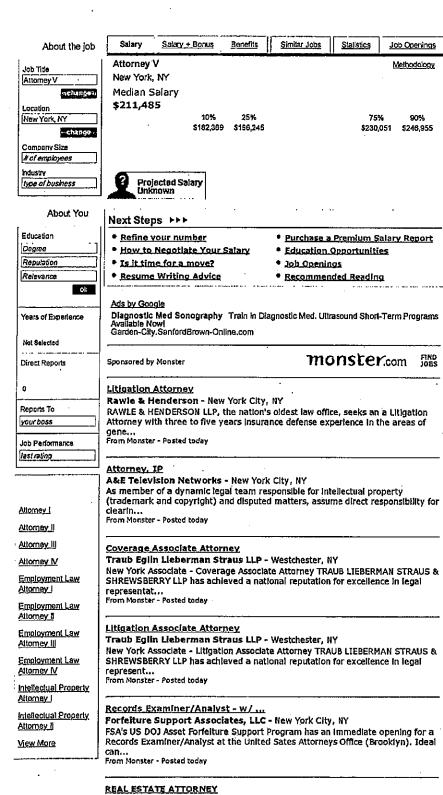
- 2 A. This is -- I believe this is the
- 3 results of a file review that Bohan did.
- 4 Q. And Bohan would have been retained by
- 5 FSA for that purpose?
- 6 A. Could have been. I don't recall
- 7 specifically. Would have been retained by
- 8 either -- I would expect Bohan was retained by us
- 9 but I don't recall specifically.
- 10 Q. Either way, it would appear from this
- 11 memo that FSA got the benefit of the loan file
- 12 diligence that Bohan did; is that correct?
- MR. BUCHDAHL: Objection to form.
- 14 THE WITNESS: Yes, we had the results
- of Bohan's analysis.
- 16 BY MS. RENDON:
- 17 Q. And, in fact, that's what the first
- 18 line under section 3 would indicate, right, RMG,
- 19 and that's the risk management group within FSA;
- 20 is that correct?
- 21 A. Uh-huh.
- 22 Q. Has received the results from Bohan's
- 23 due diligence on the 250 loans reviewed in
- 24 October. It says there a hundred percent of the
- 25 sample was randomly selected and the grades of the

EXHIBIT L

EXHIBIT M

EXHIBIT N

Exhibit O



Meyer, Suozzi, English & Klein, P.C. - Long Island, NY

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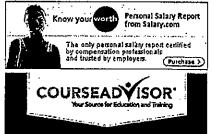


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EXHIBIT

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View more Attorney V in New York, NY

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EXHIBIT P

EXHIBIT Q

EXHIBIT R